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| 10/573,537 | 04/12/2006 | Ulf Deisenroth | DEISENROTH ET AL-1 PCT | 5462 |

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| EXAMINER | |
|---|---|
| CAHLIG, CHRISTINE T | |
| ART UNIT | PAPER NUMBER |
| 3633 | |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/573,537 | DEISENROTH ET AL. | |
| | Examiner | Art Unit | |
| | CHRISTINE T. CAJILIG | 3633 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *17 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *38,39,42-44,47-53,56-61,63,64 and 66* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *38,39,42-44,47-53,56-61,63,64 and 66* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 September 2009* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/17/09 has been entered.

### *Drawings*

The drawings were received on 9/17/09. These drawings are acceptable.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 42 and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 42 recites a door/door system having a redundant emergency exit. It is unclear whether the "/" intends to designate a door or a door system in the alternative.

Claim 56 recites the limitation "on the one hand" in line 2 of the claim and "on the other hand" in line 5 of the claim. Such recitation appears to be an

idiomatic phrase and its inclusion makes it unclear whether those are elements of the modular shelter system.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 38, and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Hönlinger (U.S. Publication No. 2002/0145308).

Regarding claims 38 and 47, Hönlinger discloses a modular shelter system which is part of a vehicle, particularly for transport of persons and/or objects, comprising a capsule-shaped housing (24) produced at least partially by means of winding technology, that has a shape, at least on its underside, which guarantees the deflection of blast waves, and an accommodation system (2, 3, Par 0010) disposed within it, mounted so that it is uncoupled from a floor (1.3) of the housing (Par 0005), wherein the accommodation system comprises a base element (3) and one or more seats (Par 0010) disposed above the base element.

Regarding claim 48, Hönlinger further discloses that the housing and the accommodation system are placed on a vehicle.

Regarding claim 49, Hönlinger further discloses that a space is present between the accommodation system that is uncoupled from the floor of the housing.

Claim 38 is rejected under 35 U.S.C. 102(b) as being anticipated by Salari (U.S. Patent No. 1,281,846).

Regarding claim 38, Salari discloses a modular shelter system, particularly for transport of persons and/or objects, comprising a capsule-shaped housing (10) produced at least partially by means of winding technology, that has a shape, at least on its underside, which guarantees the deflection of blast waves, and an accommodation system disposed within it, mounted so that it is uncoupled from a floor of the housing, wherein the accommodation system comprises a base element (19) and one or more seats (18) disposed above the base element.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salari in view of Summers (U.S. Patent No. 3,294,346),

Regarding claim 38, Salari further discloses that the housing can have any size and shape (Page 1, Ln 34-38) but does not disclose that the housing has an oval cross-section in the vertical section and in a section that runs at a right angle to its longitudinal axis.

Summers discloses a housing that has an oval cross-section.

Thus it would have been obvious to a person of ordinary skill in the art to try an oval cross-sections as taught by Summers as a person with ordinary skill has good reason to pursue known options within his or her technical grasp and such a modification would have involved a mere change in the shape of the components. A change in shape is generally recognized as being within the level of ordinary skill in the art absent persuasive evidence that the particular configuration of the claimed device was significant. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). In addition, the shaped as claimed would act similar to the circular shape disclosed by Salari.

As best understood, claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hönlinger in view of Ladika et al. (US Patent 5,663,520).

Regarding claim 42, Hönlinger discloses the modular shelter system as set forth above, but does not disclose that the housing has a door/door system having a redundant emergency exit function.

Ladika discloses an armored, blast resistant vehicle wherein each housing has a door or a door system a redundant emergency exit function.

It would have been obvious to a person having ordinary skill in the art at the time of the applicant's invention to modify the structure of Hönlinger to have the structure as taught by Ladika above to provide an armored vehicle with increased safety and evacuation features.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hönlinger.

Regarding claim 43, Hönlinger discloses the structure above, but does not disclose that the housing comprises fiber laminate material, concrete, or combinations thereof. It would have been obvious to one having ordinary skill in the art at the time of invention to use fiber laminate since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Fiber laminate would provide a lightweight, yet durable material.

Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hönlinger in view of Miguel (US Patent 4,404,889).

Regarding claim 44, Hönlinger discloses the modular shelter system as set forth above, but does not disclose that honeycomb structures, foams, or renewable raw materials are integrated into the housing.

Miguel discloses using a honeycomb structure (20 – Fig. 1) in the body of an armored vehicle.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to provide the housing of Ladika et al. and Knoll et al. with a honeycomb structure in view of the teachings of Miguel. The motivation for doing so would be to increase the blast resistance of the housing.

Claims 50-52, 61, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hönlinger in view of Bottcher et al. (CA 2,402,753).

Regarding claim 50, Hönlinger further discloses that a shock-resistant, energy-resistant or impact resistant structures (4.1, 5) is disposed in the space but does not disclose that the base element (3) does not rest against the housing (1.3).

Bottcher et al. discloses a shelter system with a base element (4) that does not rest against the housing (1) to further eliminate shock effects.

It would have been obvious to a person having ordinary skill in the art at the time of the Applicant's invention to modify the structure of Hönlinger to have the base element not rest against the housing as taught by Bottcher et al. to further eliminate effects of shock.

Regarding claim 51, Hönlinger modified by Bottcher et al. further discloses that the structures have a reinforcement structure (5) in the form of a floor support.

Regarding claims 52, Hönlinger discloses the modular shelter system as set forth above, but does not disclose that the reinforcement structure is made from homogenous aluminum or fiber laminate. It would have been obvious to

one having ordinary skill in the art at the time of invention to use aluminum or fiber laminate for the reinforcement structure, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Aluminum and fiber laminate would provide a durable, readily available material.

Regarding claim 61, Hönlinger modified by Bottcher et al. further discloses that the base element rests on the structures (4.1, 5) or by way of an intermediate layer.

Regarding claim 66, Hönlinger modified by Bottcher et al. further discloses that the seats can be removed or disassembled from the shelter system.

Claims 53, 57, 59, 60, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hönlinger and Bottcher et al. as applied in claim 50 above, and further in view of Knoll et al. (US Patent 6,378,939 B1).

Regarding claims 53, 57, 59, 60, and 63, Hönlinger discloses the modular shelter system as set forth above, but does not disclose that the accommodation system above the structures is determined in its position via an attachment system which engages the housing above the space between the accommodation system and the floor; wherein the attachment system is formed by one or more first attachment struts articulated in the upper or lateral region of the housing which have a connection with the seats; and wherein the attachment system is configured to be shock-absorbing in one or more degrees of freedom

and the seats are accommodated on the attachment element in a shock-absorbing manner.

Knoll et al. disclose an accommodation system (Figs. 1 - 2) above the floor that is position by means of an attachment system which engages the housing above the space between the accommodation system and the floor; wherein the attachment system is formed by one or more first attachment struts (138, 110) articulated in the lateral region of the housing which have a connection with the seats; and wherein the attachment system is configured to be shock-absorbing in one or more degrees of freedom and the seats are accommodated on the attachment element in a shock-absorbing manner (see Abstract)

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to mount the accommodation system of Hönlinger so that it is mounted as disclose by the teachings of Knoll et al. The motivation for doing so would be to provide the accommodation system with increased shock absorbing capability.

Claims 56 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hönlinger in view of Bottcher et al. and Knoll et al. as applied in claim 53 above, and further in view of Hoffman (US Patent 6,267,440 B1).

Regarding claims 56 and 58, Hönlinger modified by Bottcher et al. and Knoll et al. further disclose that the attachment system is formed by means of one or more second attachment elements/struts (138) articulated on in the upper

or lateral region of the housing, but does not disclose that each seat is connected with the base element and has a connection to the housing by an attachment system.

Knoll et al. disclose the seat of an accommodation system (Figs. 1 - 2) above the floor that is position by means of an attachment system articulated in the lateral region of the housing which have a connection with the seats.

Hoffman discloses wherein each seat is connected (10) with the base element/the base plate.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to mount the accommodation system of Hönlinger modified by Bottcher et al. and Knoll et al. so that it is mounted as disclose by the further teachings of Knoll et al. and Hoffman. The motivation for doing so would be to provide the accommodation system with increased shock absorbing capability and to allow the seat to support more weight.

Claim 64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hönlinger in view of Bottcher et al. as applied in claim 52 above, and further in view of Barecki (US Patent 3,630,566).

Regarding claim 64, Hönlinger modified by Bottcher et al. discloses the modular shelter system as set forth above, but does not disclose that two seats rest against one another with their backrest regions, in each instance, and have seating surfaces that face away from one another.

Barecki discloses a seating arrangement wherein two seats (22, 23) rest against one another with their backrest regions (20), in each instance, and have seating surfaces that face away from one another (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to provide the accommodation system of Hönlinger modified by Bottcher et al. with the shared backrest seating arrangement in view of the teachings of Barecki. The motivation for doing so would be to increase the seating capacity of the modular shelter system.

***Response to Arguments***

Applicant's arguments with respect to claim 39, 42, 43, and 52 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 9/17/09 have been fully considered but they are not persuasive.

On pages 15-16, Applicant argues that Hönlinger or Salari does not disclose that persons are present in the accommodation system, decouple from the floor, and has a bottom extending parallel to the ground.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., person present and a bottom extending parallel to the ground) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Moreover, both Hönlinger and Salari indeed disclose that the accommodation system is uncoupled or unattached from a floor of the housing by virtue of being spaced therefrom.

In response to applicant's argument on pages 17-18 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., honeycomb structure integrated directly in the housing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On page 18, Applicant also argues that Hönlinger does not disclose a space is present between the accommodation system and the floor of the housing. However, Hönlinger indeed discloses that the accommodation system formed in part by the base 2 is spaced from the floor 1.3 of the housing. No language in the claim precludes the interpretation of the element 1.3 as the floor of the housing.

In response to applicant's argument on page 19 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the energy absorbent structures are durable and stiffening) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On page 20, applicant argues that Knoll et al. fails to teach an accommodation system that engages the housing above the space between the base element and the floor of the housing. Knoll et al. teaches that a seat of an accommodation system is coupled to a wall of the housing. Therefore, modifying the accommodation system of Hönlinger to have seats attached on the wall of the housing would necessarily engage the housing above the space between the base of the accommodation system and the floor of the housing.

In response to applicant's arguments on pages 20-21 against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case, Hönlinger modified by the teaching of Knoll et al. and Hoffman makes obvious the claimed seat connected to the base and the housing.

On page 22, applicant argues that Hönlinger does not disclose that the base rests on the intermediate layer and that Knoll et al. does not disclose energy absorbing structures. However, Hönlinger does disclose that the base rests or lays on the structures 5. Moreover, Knoll et al. expressly discloses that the seats "absorb energy" (see abstract), and therefore incorporate energy absorbing structures.

Finally, applicant argues that there is no shelter system with an accommodation system in Hönlinger and that the seats cannot be removed or disassembled from it. However, as discussed above, Hönlinger discloses a

shelter system is comprised of the housing with an accommodation system inside of it comprising the base and seats. Furthermore, Hönlinger does not state that the seats cannot be removed or disassembled. Hönlinger only discloses that the seats can be assembled in place which implies that it may also be disassembled.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE T. CAJILIG whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday-Thursday, 9 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Canfield can be reached on (571) 272-6840. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. T. C./
Examiner, Art Unit 3633

/Robert J Canfield/
Primary Examiner, Art Unit 3635